No. 603

In the Supreme Court of the United States

OCTOBER TERM, 1940

H. A. GRAY, AS DIRECTOR OF THE BITUMINOUS COAL DIVISION OF THE DEPARTMENT OF THE INTERIOR, AND HAROLD L. ICKES, AS SECRETARY OF THE INTERIOR, PETITIONERS

v.

LEGH R. POWELL, JR., AND HENRY W. ANDERSON, AS RECEIVERS OF SEABOARD AIR LINE RAILWAY COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE PETITIONERS

INDEX

CITATIONS

Cases:

Cases—Continued. Page

Cases—Continued

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OPINIONS BELOW

The findings, conclusions, and opinion of the Director of the Bituminous Coal Division may be found at R. 532. The opinion of the Circuit Court of Appeals for the Fourth Circuit (R. 573–580) is reported in 114 F. (2d) 752.

JURISDICTION

The decree of the Circuit Court of Appeals sought to be reviewed was entered on September 26, 1940 (R. 581). The jurisdiction of this Court rests upon Sections 239 and 240 of the Judicial Code, as amended, and Sections 4–A and 6 (b) of the Bituminous Coal Act of 1937.

QUESTIONS PRESENTED

A railroad leased the mineral rights to coal lands. At the same time, in an interrelated and dependent agreement, it made a contract with a coal producer pursuant to which the coal producer was to mine the coal and was to assume, and indemnify the railroad against, all liabilities, burdens, and risks attendant upon the coal mining business. The issue is whether coal mined from these lands by the coal producer and consumed by the railroad is "consumed by the producer" within the meaning of the exemption contained in Section 4 II (l) of the Bituminous Coal Act of 1937. Resolution of this issue involves the following questions:

1. Is the Director's determination that under the above circumstances the coal is not consumed by the producer binding upon the courts if supported by substantial evidence?

2. If so, is the Director's finding supported by substantial evidence?

3. If not, did the court below err in holding as a matter of law that respondents were both producers and consumers of the coal in question?

STATUTE INVOLVED

The statute involved is the Bituminous Coal Act of 1937, c. 127, 50 Stat. 72–91, U. S. C. Supp. V, Title 15, secs. 828–851. The provisions of the Act primarily involved are:

> SEC. 4 II (l). The provisions of this section shall not apply to coal consumed by the producer or to coal transported by the producer to himself for consumption by him.
>
> SEC. 17. As used in this Act—
>
> * * * * *
>
> (e) The term "producer" includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.

Copies of the entire Act will be handed to the Court on the argument.

STATEMENT

Pursuant to Section 4–A of the Bituminous Coal Act of 1937, respondents, the receivers for the Seaboard Air Line Railway Company, applied to the Director of the Bituminous Coal Division of the Department of the Interior for exemption from the regulatory provisions of the Act for certain coal from three mines which they claimed that they operated, on the ground that the coal was "consumed by the producer" within the meaning of Section 4 II (l) (R. 1–4).

A hearing was held before an examiner, evidence was introduced, an examiner's report issued recommending denial of the application for exemption,

exceptions and a brief were filed by respondents, and oral argument was heard by the Director (R. 533). The facts, as disclosed by the evidence and as summarized in the Director's findings and opinion, are not in dispute.

The coal for which exemption is sought is consumed by the railroad (R. 545; 2). This coal is mined by Daniel H. Pritchard and the Peerless Coal Mining Company from three mines leased by the respondents, namely, the William-Ann and Chilton Block No. 1 mines in West Virginia and the Glamorgan mine in Virginia (R. 533; 2). Since the facts as to each of the three mines are substantially the same, it will be necessary to describe here only the circumstances relating to one of them—the Chilton Block No. 1 Mine.

In July 1935 the Chilton Block Coal Company was the lessee of a tract of coal land (R. 541; 242). The president of the company was Daniel H. Pritchard (R. 544; 126, 131); Pritchard was a coal producer engaged in the commercial operation of several mines (R. 544; 27, 129), and his wife owned a controlling stock interest in the Chilton Block Company (R. 126). On July 5, 1935, the Chilton Block Company offered to assign to respondents, in return for a royalty of 10 cents per ton, the right to extract coal from the mine, conditional on acceptance by respondents of an offer simultaneously made by Pritchard to mine the coal and deliver it to respondents for a specified compensation (R. 541–542; 242–243). The company offered to grant

to Pritchard, apparently without compensation, the right to use all of its equipment and machinery in performance of the mining operations (R. 542; 243). The offer to sublease the mineral rights provided that the lease should terminate simultaneously with the termination of the agreement with Pritchard (R. 542; 243).[1]

Pritchard's offer to mine the coal was in turn conditional upon acquisition by respondents of the mineral rights (R. 542; 324). He offered to mine the coal either on a cost-plus basis or at a fixed price of $1.15 per ton, subject to modification in case of fluctuation in the cost of materials, wages, or taxes (R. 542–543; 325). Pritchard was to deliver coal, on cars at the mine, in the amounts respondents ordered (R. 542–543; 325). He was to acquire at

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[1] The contract to operate the William-Ann mine was also made with Pritchard, who owned stock in and was sales agent for, and whose brothers managed the William-Ann Company, which had previously operated the William-Ann mine under lease (R. 536, 539; 64–65, 69). On the same day that the respondents leased the William-Ann mine and contracted with Pritchard to operate it, Pritchard, in order to induce the lessors to make a short-term lease with respondents, entered into a lease for the same property for 30 years to begin immediately upon the termination of the lease to respondents (R. 539; 133–141, 383–426). The lease of the Glamorgan mine was from the Glamorgan Coal Lands Corporation; the contract to operate the mine was originally made with Glamorgan Coals, Inc., which owned the machinery and equipment in the mine (R. 539, 540; 30). The contract with Glamorgan Coals, Inc., was subsequently transferred to Peerless Coal Corporation (R. 540; 31–33).

his own expense the mining machinery and equipment (R. 543; 325). An agreement was to be made embodying, in addition to the above, the following terms and conditions:[2]

> (a) The contractor (Pritchard) is to provide all the labor, materials and supplies and perform all the work necessary to the mining of the coal (R. 536; 296).
>
> (b) The contractor will at his own expense maintain and *manage* such organization as is necessary to the performance of the contract (R. 536; 296).
>
> (c) The contractor will assume and perform all of the obligations of the respondents to the landowner except the payment of royalties (R. 536; 297).[3]
>
> (d) The contractor will maintain, at his sole expense, all the necessary insurance on the property (R. 537; 297–298).
>
> (e) The contractor will bear, and indemnify respondents against, all risks incident to the work to be performed, including particularly losses for injury to persons and property, taxes on the mine and its equip-

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[2] The offer provided that the agreement should embody the same terms and conditions as were contained in an agreement previously entered into between respondents and Pritchard to operate the William-Ann mine (R. 542; 326).

[3] The contract made for the William-Ann mine provided that respondents were to pay taxes on the land (R. 536; 297), but the contracts for the Chilton Block and Glamorgan mines expressly provided that the contractors were to relieve respondents of liability to pay even such taxes (R. 541, 542; 243, 261, 327).

ment, fines, penalties, lien claims of other liability, and attorneys' fees (R. 537–538; 298–299).

(f) Respondents may terminate the contract at any time that they are able to purchase coal on the open market at a price lower than the amount to be paid the contractor plus the royalties to the lessor, unless the contractor reduces the amount he is to receive so as to enable the respondents to buy at the market price (R. 544–545; 327).

(g) The coal may be inspected at the mine by respondents' inspectors, and respondents are required to pay only for coal of the requisite quality and grade (R. 545; 295).

(h) All the coal produced is to be consumed by respondents except a small portion sold to the contractor's employees (R. 545; 301).

(i) The agreement specifically provides that (R. 304):

"The relation of the Contractor to the Receivers under or by virtue of this agreement is solely the relation of an independent contractor, and the Contractor, as such independent contractor, shall be solely responsible for all the acts, negligence or omissions of the Contractor, his agents, servants, employees or representatives."

The offers made by the Chilton Block Company and Pritchard were accepted by respondents on July 9, 1935 (R. 543; 328). The original agreements were to run for a year with option to renew, and with minor modifications the agreements have

been continued in effect since that time (R. 543–544; 27–28, 242–243, 238–239, 235, 324–325, 319–320, 313–314).

In the operations under the contract, the respondents advise the contractor periodically as to how much coal is desired and the contractor loads the coal into cars and orders the cars shipped to any point respondents request (R. 545; 108). Invoices are submitted to respondents and payments made to the lessor and contractor on a monthly basis (R. 546; 109, 112). The coal from the mines is shipped to respondents by connecting carriers, generally across state lines, and is consumed on respondents' railroad from Virginia to Florida (R. 545–546; 47, 111, 119, 123).

The original contracts and leases for the William-Ann and Glamorgan mines, the other two mines here involved, were made in May and July 1934 (R. 534, 539; 163, 205, 256, 293), when N. R. A. code prices were in effect. The Director expressly found, upon the basis of affirmative evidence, that the lease and contract for the William-Ann mine, upon which the contracts for the other mines were modeled, were entered into in order to enable respondents to purchase below N. R. A. code prices (R. 539; 39, 59, 137). The William-Ann lease and contract were extended for periods of three weeks or less while the case of *Carter* v. *Carter Coal Co.*, 298 U. S. 238, was under submission, expressly for the purpose of awaiting that decision and also while new price legislation was pending in Congress, so that respondents could decide whether to

renew them (R. 535; 55–56, 202, 287–291). The original contract and lease for the Chilton Block mine were made in July 1935 (R. 242–244, 324), after the invalidation of the National Industrial Recovery Act, but while the bill which became the Bituminous Coal Conservation Act of 1935 (H. R. 8429, 74th Cong., 1st Sess.) was pending in Congress. During the entire period in which the contracts were made and renewed, price-fixing legislation has either been in effect or pending in Congress.

On the basis of the above facts, the Director found that respondents were not the producers of the coal mined from the three leased properties (R. 549), since they participate in no way in the mining process, exercise no control over the contractor, and have assumed none of the risks, liabilities or burdens of a person engaged in the mining business. The contractual arrangements, he concluded, "were intended as a flexible contrivance by means of which the Receivers hoped to establish themselves as nominal producers of the coal consumed by them and thereby escape the price provisions of coal legislation, including the Act." (R. 547). His opinion states (R. 549–550):

> * * * The transaction has the aspects of an ordinary commercial sale and, indeed, it appears that Applicants stand in a position not materially different from that of any large consumer who dominates a small source of supply or who has contracted for the total product of a given manufacturing enterprise or tract of land. In every real

> sense, with respect to the supply of coal obtained from these contractors, Applicants have not become a "producer" but have rather left their "consumer" position and mobility unchanged. This mobility is demonstrated quite pointedly by the contract provisions permitting Applicants to terminate the contract if they can obtain coal in the open market at a lower price than under the present arrangement, provided that the contractors do not reduce their compensation sufficient to meet the market price. The leases are terminable upon termination of the contracts.

Accordingly, the Director held that the transactions in coal covered by the application for exemption are subject to the regulatory provisions of the Act and that the exemption sought should be denied.[4]

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[4] The Circuit Court of Appeals, overlooking the fact that respondents had applied for exemption for the coal produced and the "transactions and commerce in said coal" (R. 577), as well as for themselves personally, thought it "anomalous" for the Division to hold that respondents were not a producer for purposes of exemption, and yet still subject to the Act. But Sections 4 II (l) and 4-A provide only for the exemption of "coal" and "commerce in coal," not of producers personally, and it is clear from the Director's opinion that he held only the "transactions" in the coal involved to be subject to the Act, not the respondents (R. 552). The Director's position, as set forth in his brief below (p. 23), was and is "that petitioners are not the 'producer' of the coal for any purpose of the Act, whether it be the taxing, pricing, or other provisions." Since the independent contractors are the real producers of the coal, the Act operates affirmatively upon them, not upon respondents.

Respondents filed a petition to review in the Circuit Court of Appeals for the Fourth Circuit (R. 555–561). That court reversed the Director's decision, holding that it was unsupported by substantial evidence and based upon error in law (R. 573–580).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the Director's order denying exemption is based upon error of law and is not supported by substantial evidence;

2. In holding that respondents are the "producer" of the coal in question and that such coal is exempt under Section 4 II (l) of the Bituminous Coal Act of 1937;

3. In holding that the issue whether respondents are producers within the meaning of the exemption provision in Section 4 II (l) of the Act presents a question of law for the court to decide for itself, and in failing to give any weight to the Director's determination that respondents are not the "producer" of the coal.

SUMMARY OF ARGUMENT

I

A. The court below, treating the question here involved as one of law, made its own independent determination as to whether respondents were producers within the meaning of the Bituminous Coal Act. This holding is inconsistent with *Shields* v. *Utah Idaho Central R. Co.*, 305 U. S. 177, *Roches-*

ter Telephone Corp. v. *United States*, 307 U. S. 125, and *South Chicago Coal & Dock Co.* v. *Bassett*, 309 U. S. 251, in each of which the Court recognized that the question of whether particular facts brought a person within statutory language was one upon which the judgment of the administrative agency was to be accepted if supported by evidence in the record.

This conclusion need not be based upon the traditional but artificial separation of administrative determinations into questions of fact and of law. Cases involving the application of statutory language almost inevitably require the consideration of both factual and legal problems, with final judgment dependent upon the interplay of both. The establishment by Congress of an expert administrative agency with authority to determine a particular question manifests a legislative intention that the determination of the agency be accepted as to all the factors which enter into the formulation of judgment. Such a body of specialists is better equipped than the courts to pass upon issues requiring an intimate knowledge of the background and purposes of a statute and of the practical consequences of a particular construction. On such matters, as well as upon those which are purely factual, the rule should be applied that "the judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 146.

B. The Director's determination that respondents are not producers of the coal they consume is supported by substantial evidence. Respondents differ from the ordinary consumer only in that they hold leases on the coal lands and pay royalties directly to the lessor. In view of the fact that they are not otherwise engaged in, and that they bear none of the risks of, the mining business, the single fact that they pay two persons instead of one for their coal is insufficient to make them producers within the meaning of the Act. The complex arrangements into which they have entered amount to no more than a device to protect themselves against increases in the price of coal resulting from price-fixing legislation.

II

The express terms of the Act establish that respondents are not producers of the coal which they consume. Section 17 (c) defines producer as a person "engaged in the business of mining coal." The facts here show that the independent contractors, not the respondents, are engaged in the coal mining business. A person who contracts with an independent contractor to perform work on his property is not, by reason of that fact alone, engaged in the business of the contractor.

The construction of the statute which the Director adopted is essential if the purposes of the Act are to be achieved. The Act was designed to prevent the abuses of cut-throat competition in the

coal industry by the stabilization of prices. The device employed by respondents, if sanctioned, would permit such competition to continue unabated through the mere use of a different form of contract. The facts of this case show that otherwise independent producers can readily be converted into independent contractors for the purpose of evading minimum prices.

The contractor's acts are not attributable to respondents on any theory of agency. Under the most orthodox common law tests, the contractors, who are not subject to respondents' control or supervision and are not empowered to bind respondents in dealing with third persons or to subject them to the burdens and liabilities of the coal mining business, are not respondents' agents. In any event, the question here is one of statutory construction, not to be resolved by the technicalities of the law of agency. Congress certainly did not intend that, through the application of so-called common law principles, Section 4 II (l) should become an instrument for destroying the remainder of the Act.

III

There is no substance to the argument that the Act is unconstitutional as applied in this case because it regulates royalties and the compensation for services rather than interstate prices. These factors are only affected by the regulation because they are essential ingredients of the interstate price. Constitutional power is not restricted by

any technical definition of price found in the law of sales.

ARGUMENT

The court below paid lip service to the statutory mandate that the Director's decision is binding if supported by substantial evidence (R. 580). But in truth it made its own independent determination as to whether respondents were a "producer" within the meaning of the Bituminous Coal Act. The opinion makes it clear that no weight whatever was given the Director's findings or determination and that the court proceeded on the assumption that whether or not respondents were a "producer" was wholly a matter of law, for the independent determination of the court (R. 580).

We urge, first, that the question was for the primary determination of the Director, and that the court below should have affirmed his decision since it was supported by substantial evidence. In the second place, even if the issue be viewed as one for the courts independently of the Director, we urge that the court below erred as a matter of law in ruling that the respondents were a "producer" within the meaning of the Act.

I

THE DIRECTOR'S DETERMINATION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE AND IS THEREFORE CONCLUSIVE

A. *The Director's determination if supported by substantial evidence is conclusive*

1. *The authorities.*—The present question does not differ in nature from those considered in

Shields v. *Utah Idaho Central R. Co.*, 305 U. S. 177, *South Chicago Coal & Dock Co.* v. *Bassett*, 309 U. S. 251, and *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125. See also *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 400. The issue in the *Shields* case was whether on undisputed facts a railroad was an "interurban" within the meaning of the Railway Labor Act; in the *South Chicago* case whether an employee was a "member of a crew" within the meaning of the Longshoremen and Harbor Workers Compensation Act; and in the *Rochester Telephone* case whether one company was under the "control" of another within the meaning of the Communications Act.

In each of the cases cited, this Court recognized that the question as to whether particular facts brought a person within statutory language was a matter of judgment on which the decision of the administrative official was to be accepted, if supported by evidence in the record, and that such questions of administrative judgment were not to be treated as pure matters of law for purposes of judicial review. In the *Shields* case this Court declared that the "determination" as to whether the carrier was an interurban "was one of fact" (305 U. S. at 181). In the *South Chicago* case the Court refused to treat the issue of whether an employee was a member of a crew as presenting a mere question of law (309 U. S. at 258). And in the *Rochester Telephone* case the Court declared that whether

one company had obtained "control" of another within the meaning of the Communications Act presented "an issue of fact" (307 U. S. at 145). In its opinion in the *Sunshine* case this Court, citing the *Shields* case, indicated that this principle applies to proceedings for exemptions under the Bituminous Coal Act; it referred to "the determination of the *question of fact* whether a particular coal producer fell within the Act" (310 U. S. at 400). (Italics supplied.)

Whether a person is a "producer" of coal presents the same type of issue as those considered in the cases just described. The action of the court below in treating the issue as one of law, without regard to the findings of the administrative agency, is in obvious conflict with the principles underlying those decisions.

Respondents urge that the issue must be one of law because the facts are undisputed. But this was also true in the cases cited. In each the determination as to status under a statute was dependent upon the application of judgment to substantially undisputed facts. As this Court stated in *United States* v. *Louisville & Nashville R. R. Co.*, 235 U. S. 314, 320:

> * * * the court below, in substituting its judgment as to the existence of preference for that of the Commission *on the ground that where there was no dispute as to the facts it had a right to do so,* obviously exerted an authority not conferred upon it

> by the statute. * * * It cannot be otherwise since if the view of the statute upheld below be sustained, the Commission would become but a mere instrument for the purpose of taking testimony to be submitted to the courts for their ultimate action. (Italics supplied.)

2. *The principles of judicial review.*—The same answer is required if one goes back of the rulings of this Court and undertakes to build from basic principles a criterion by which to determine those questions which are primarily for administrative determination, and those which are subject to an independent examination by the reviewing court.

This case involves no question of constitutional jurisdiction, nor any other question of constitutional right. Whatever, then, may be the force of cases such as *Crowell* v. *Benson*, 285 U. S. 22, or *St. Joseph Stockyards Co.* v. *United States*, 298 U. S. 38, they have no application here. The scope of review is simply a question of Congressional intent.

Section 6 (b) of the Bituminous Coal Act provides for judicial review of the Commission's order, and declares that "The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive." This declaration enacts the traditional formula used to demarcate the functions of administrative agency and reviewing court: questions of "fact" are primarily for administrative determination and questions of "law" are subject to independent examination by the

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court. The same phrasing of the principle of delineation would be adopted even had Congress been silent. See *Shields* v. *Utah Idaho Central R. Co.*, 305 U. S. 177, 185. Congress, then, has indicated its intention as to the scope of judicial review simply by declaring that the decisions of the Director should be subject to the judicial review customarily accorded administrative determinations but to no more.

If this traditional criterion of "law" or "fact" be applied to the present case, the issue must be regarded as one of "fact" within the decisions of this Court which have been discussed above.

But the formula, if applied literally, is likely to beg the question at least as often as it answers it. Its simplicity is engaging, but it obscures rather than clarifies the essential elements of the problem.[5] First, it is advanced as a sovereign talisman for situations so dissimilar as the relationships between (a) judge and jury, (b) appellate and trial court, and (c) reviewing court and administrative agency. Second, it deals in absolute terms with a question which is always one of degree; the cate-

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[5] There have been frequent comments upon the inadequacy of the fact and law test. See Dickinson, *Administrative Justice and the Supremacy of Law in the United States* (1927), pp. 54 *et seq.*; McFarland, *Judicial Control of the Federal Trade Commission and the Interstate Commerce Commission* (1933), pp. 25 *et seq.*; Isaacs, *The Law and the Facts*, 22 Col. L. Rev. 1; Landis, *Administrative Law and the Courts*, 47 Yale L. J. 519, 531–532; Cooper, *Administrative Justice and the Role of Discretion*, 47 Yale L. J. 577, 588–590.

gory of "mixed law and fact" questions reflects this inadequacy but does not solve it. See *e. g.*, *Interstate Commerce Commission* v. *Union Pacific R. Co.*, 222 U. S. 541, 547; *Bates & Guild Co.* v. *Payne*, 194 U. S. 106, 109. Every case, in other words, involves both questions of law and of fact, and any attempt to separate an issue into exclusive categories of "law" or of "fact" is certain to prove fruitless when both categories are present.

Any unflinching literalism in use of the traditional formula would confuse the real problem: the delineation of the functions of the various instrumentalities for adjudication—judge and jury, administrative body and reviewing court, trial and appellate tribunal—so as to carry out the underlying legislative intention and to effect sound administration of the law. As between administrative body and reviewing court, this delineation must be made by determining the tribunal which Congress, in view of the qualifications of the respective adjudicatory bodies, must be supposed to have intended to invest with primary authority for decision.

For example, with respect to an administrative ruling such as that here in issue, involving the applicability of statutory language to particular facts, the person called upon to make the determination is faced with the task of (1) finding specific or evidentiary facts, (2) ascertaining the intention of Congress from the language of the Act, its legislative history, purposes, and structure, and (3) in the

light of these considerations, drawing an ultimate inference or conclusion as to whether the facts found come within the scope of the statute. In this type of situation, where final judgment necessarily depends upon the interplay of both factual and legal considerations, the "fact" or "law" criterion, developed for the division of functions between experienced judge and inexperienced jurors, is both inappropriate and impossible of literal application. The controlling factor, we believe, should be that the administrative tribunal is more, rather than less, expert than the judge, not only in the solution of factual problems arising in its specialized field, but also in its familiarity with the background and purposes of the statute and with the practical consequences which will ensue from any particular construction. The establishment by Congress of an administrative agency with authority to determine a particular question manifests a legislative intention to take advantage of the expert judgment of a body "informed by experience" in the designated field. *Illinois Central R. R. Co. v. Interstate Commerce Commission*, 206 U. S. 441, 454.

Decision of the instant case, for example, requires a background knowledge of the manner in which the coal industry operates and of the activities customarily carried on by coal producers on the one hand and by consumers on the other. Determination of who is a producer for purposes of the exemption provision necessitates an under-

standing of the dynamics of the coal industry and an appreciation of the many different ways in which coal may be translated from a mineral in the ground to a fuel in the consumers' burners. It requires, in addition to a knowledge of the general purposes of Congress in passing the Coal Act, an understanding of the industrial details which led Congress to grant the particular exemption contained in Section 4 II (l). It requires the ability to foretell the effect of the method of acquiring coal here adopted upon the attainment of this objective. It is, in short, a matter in which the "feel of judgment" is peculiarly important. *Nashville, C. & St. L. Ry.* v. *Browning*, 310 U. S. 362, 366. Such a determination, we submit, is one which should be made by an expert administrative body equipped to bring together all of the interrelated fragments of the picture, and not by a court, experienced in the law generally but without intimate grasp of the industrial and economic details which make up the coal industry and form the background of the Coal Act.

For these reasons, when Congress authorizes an administrative agency to decide a question, it should be assumed that Congress intends that the matter be submitted to the judgment and discretion of a trained group of specialists rather than to a court; insofar as a determination of the question calls for the exercise of judgment and discretion, the administrative decision should be accepted by the

courts irrespective of whether based on facts in evidence or on familiarity with the legislative and practical setting of the particular statutory provision involved.

This does not mean that the conclusions of an administrative body are final on one type of question any more than on the other. The determination of the administrative body must have "warrant in the record" (*Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 146) and a reasonable basis in the law. Just as an administrative decision which is unsupported by substantial evidence has no rational basis in fact, so too an administrative ruling which is plainly unreasonable in the light of express statutory language or other convincing evidence of legislative intention has no foundation in law.[6] For either vice, administrative action may be set aside. But in either event, we submit, "the judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body". *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 146; *Mississippi Valley Barge Line Co.*

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[6] Thus, if the language of the statute or its legislative history manifests a specific legislative intention as applied to a particular state of facts, it would be arbitrary for an administrative body to give the statute a different meaning. But if legislative intention appears only in broad outline without reference to a specific state of facts, there would be legitimate room for administrative discretion in determining whether the Act applied in a particular situation.

v. *United States*, 292 U. S. 282, 286–287; *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297, 303.

Under such a test, which we believe conforms to the intention of Congress in delegating power to administrative agencies and to the actual practice of this Court in many of the cases cited, the courts will not be required artificially to characterize a problem, which inevitably has both aspects, as either "fact" or "law." They will rather give due weight to the trained judgment of the administrative bodies on all matters with respect to which they have the advantage of specialized experience. Only when an administrative determination has no basis in substantial evidence, or is arbitrary and capricious, will it be overruled.

This approach was adopted in one of the earliest cases involving judicial review of administrative rulings. In *Bates & Guild Co.* v. *Payne*, 194 U. S. 106, in passing upon a decision of the Postmaster General, this Court said (p. 108):

> * * * where Congress has committed to the head of a department certain duties requiring the exercise of judgment and discretion, his action thereon, whether it involve questions of law or fact, will not be reviewed by the courts, unless he has exceeded his authority or this court should be of opinion that his action was clearly wrong. * * * where there is a mixed question of law and fact, and the court cannot so separate it as to show clearly where

> the mistake of law is, the decision of the tribunal to which the law had confided the matter is conclusive.

This recognition of the importance of the administrative judgment was translated into the settled doctrine of primary jurisdiction of the administrative agency over all questions involving technical judgment. See *Rochester Tel. Corp.* v. *United States*, 307 U. S. 125, 139, and cases cited. Its breadth may be illustrated by two recent decisions of this Court. In *Tank Car Corp.* v. *Terminal Co.*, 308 U. S. 422, 433, the Court held that although the District Court had jurisdiction over a suit for damages, the existence of "an administrative problem" required the District Court to stay "its hand pending the Commission's determination of the lawfulness and reasonableness of the practices under the terms of the Act." Similarly, in *Armour & Co.* v. *Alton R. Co.*, No. 293, present Term, the Court accepted the argument that the "complex transportation problems" presented required submission of both legal and factual questions to the Interstate Commerce Commission. This implicit recognition that administrative judgment must be applied to both legal and factual issues because of their interrelation would be futile if the courts subsequently, on the assumption that segregation of the "legal" issues were possible, were independently to exercise their own judgment on the ultimate conclusion.

B. *The Director's determination is supported by substantial evidence*

The term "producer" is defined in Section 17 (e) of the Act as including "all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal."[7] Typically, a producer or a person engaged in the business of mining coal operates equipment which he owns or rents; hires a crew of men who extract the coal from the ground and prepare and load it for shipment; directs and supervises work at the mine; is financially responsible for the work and welfare of the miners; and bears the expenses and risks of the enterprise. The producer either owns the coal mine or leases the right to extract the coal, paying a royalty to the landowner or a prior lessor.[8] In either case he ships the coal to a consumer in return for the payment of a specified sum.

The typical consumer orders coal from a mine operator, specifying the amount desired, the dates of shipment and the point of destination. He normally specifies, in addition, the quality of coal desired and inspects the coal to see if it conforms to the specification. He pays the mine operator a sum agreed upon in a contract. He consumes the coal.

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[7] The "business of mining" ore has been described by this Court as consisting "in severing it from its natural bed and bringing it to the surface * * *." *Oliver Iron Mining Co. v. Lord*, 262 U. S. 172, 177.

[8] Hunt, Tryon, and Willits, *What the Coal Commission Found* (1925), p. 91.

It is not difficult to see where respondents fit into this picture. They lease the right to extract coal from certain mines and pay royalties to the lessor. They tell an operator or operating company how much coal they desire to have shipped to them during a particular period, and name the point of destination (R. 108–109). They have the right to inspect the coal for quality before it is shipped and to reject any coal that does not meet their specifications (R. 104–105, 184, 295). They pay the operator a certain amount per ton in accordance with the terms of the contract. They consume the coal.

Respondents do not extract the coal from the ground themselves or hire the miners who do extract it. They do not direct or give any instructions to the persons who do the hiring. They do not pay the men. They do not supervise the work in any manner, even in its broadest aspects. They do not designate the portion of the mine where work is to be performed, determine the amount of coal to be taken from any particular section of the mine, or prescribe the method of mining. They do not own, rent, or operate the mining machinery or equipment. They do not purchase supplies, or direct what supplies shall be purchased. They do not load the coal into cars or supervise the loading (R. 57, 96, 112, 131–132). They are not financially responsible to the miners or to third persons for losses resulting from the mining operations. They do not pay for insurance, workmen's compensa-

tion, taxes, or penalties. They have carefully immunized themselves against all of the risks of the business of mining coal.[9] Each of the above functions is performed by the independent contractors who, by vocation, are coal producers on their own behalf.

These facts show that respondents differ from the typical consumer only in that they held leases on the coal lands and pay royalties directly to the lessor. Even in this respect, they occupy a position which is in no way comparable to that of a typical coal producer, for the mineral rights which they have secured involve no investment risk whatever. They have neither invested funds in the purchase of coal-bearing lands[10] nor have they entered into any leases imposing upon them contractual obligations which would prove burdensome in the event of a declining market. This is so de-

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[9] Respondents assert that they bear certain risks and burdens because the amount which they must pay the contractors for the service performed may fluctuate with the cost of materials, labor, and taxes. The contracts also allow respondents the option of paying on a "cost-plus" basis. But payment by a purchaser for what he obtains and adjustment of the price on a "cost-plus" basis do not convert the purchaser into a producer. Such provisions frequently occur in ordinary contracts of sale without affecting the nature of the relationship between the parties. See *United States* v. *Driscoll*, 96 U. S. 421; *Kruse* v. *Revelson*, 115 Ohio St. 594; Note, 55 A. L. R. 291.

[10] In this connection it is significant that the necessary improvements in the William-Ann mine were to be made by Pritchard rather than by respondents (R. 303), and that Pritchard was to put the Chilton mine in serviceable condition at his own expense (R. 325–326).

spite the provision requiring the payment of minimum royalties, because the leases are terminable upon the termination of the operating contracts, and the operating contracts are terminable whenever respondents can obtain coal in the open market at a lower price than the aggregate amount payable to the contractor and the lessor. It is evident, therefore, that a decline in the price of coal, which would normally have an adverse effect upon a coal producer, whether he operates property which he owns or which he leases, cannot have such an effect upon the respondents. To the contrary, respondents, like all other consumers, would be directly benefited by any decline in the market price and, in fact, would be in a better position than most consumers to take advantage of such a decline because they would not be bound by contracts requiring them to buy specific amounts of coal at a specified price for a particular period.

In no realistic sense, therefore, can the fact that respondents are lessees of the coal mined by the contractors be considered as putting them in a different position than the typical consumer. Respondents are simply consumers who pay for the coal and its production separately instead of paying one person for both. The complex arrangement into which they have entered amounts to no more than a device to protect themselves against any increase in the price of coal, whether brought about by a price-fixing statute or otherwise. It can be availed of by any producer and consumer

seeking to contract with each other at prices below those fixed under the Act, by the mere formality of making the consumer rather than the producer the lessee of the mining rights.[11]

In these circumstances, we believe it manifest that the Director correctly concluded that respondents are not the producers of the coal which they consume and that the scheme which they evolved was merely "a flexible contrivance" by which they sought to establish themselves as "nominal producers" and thereby escape the price provisions of the Act.[12] See pp. 33–37, *infra.* Certainly it cannot be said that there is no "rational basis" for this conclusion. Cf. *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, at 146; *Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 286–287.

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[11] While this subterfuge would for obvious reasons be resorted to by large consumers, the device would be equally available to small consumers. Any consumer could lease from the landowner the right to extract a specified amount of coal and contract with the coal operator to pay him separately for extracting and shipping that amount. Since this case was decided below, the Bituminous Coal Division has received several applications for exemption on the same ground as that involved in the present case. One of these applications relates to a contract for only 6,200 tons of coal. *Application of Morgantown Glassware Guild*, No. 1463 FD, filed October 16, 1940.

[12] Cf. *United States* v. *San Francisco*, 310 U. S. 16, 28, where this Court stated: "Mere words and ingenuity of contractual expression, whatever their effect between the parties, cannot by description make permissible a course of conduct forbidden by law."

II

THE DIRECTOR'S DETERMINATION WAS NOT ERRONEOUS IN POINT OF LAW

1. *The language of the Act.* Section 4 II (1) exempts coal "consumed by the producer". "Producer" is defined in Section 17 (e) as including all individuals, corporations, etc., "engaged in the business of mining coal." The facts outlined in the preceding pages demonstrate that it is the independent contractors, not the respondents, who are engaged in the business of mining coal. Respondents are not producers unless any owner of property who contracts with an independent contractor to have work and services performed on his property is himself to be regarded as engaged in the business of the contractor. But a landowner who engages a contractor to build a house on his land is not by reason of that fact alone engaged in the building business. See *Restatement of the Law of Agency*, Sec. 2, comment b, p. 13, quoted *infra*, p. 41.

Cases arising under other statutes hold that the owner of a product who procures another to turn it into a usable article is not himself the manufacturer or producer. In *People* v. *Horn Silver Mining Co.*, 105 N. Y. 76, affirmed, 143 U. S. 305, the New York Court of Appeals held that a silver mining company which turned over its bullion to an assay office to be refined and then returned to it was not engaged in manufacturing, saying (p. 82):

> * * * It was no more a manufacturer than a farmer is who takes his grain to the grist-mill to be ground into flour for a part of the grain or a money compensation, or who takes his wool to a cloth manufacturer to be made into cloth for a compensation, and then to be returned to him.

In *H. M. Rowe Company v. Tax Commission*, 149 Md. 251, 261, the Maryland Court of Appeals rejected the contention that the owner and writer of a manuscript who paid another to print books from it was himself engaged in printing and manufacturing. The court declared that it would be

> * * * strained and unnatural * * * to hold that one who procures the products which he markets to be manufactured by another, not his agent, manufactures them himself. * * * it nowhere appears in this case that the persons who did the actual work of manufacturing the appellant's product were its agents, but on the contrary it appears that they were independent contractors.

See also *Commonwealth v. Williamsport Rail Co.*, 250 Pa. 596; *People ex rel. Jewellers Circular Pub. Co. v. Roberts*, 155 N. Y. 1.

These cases indicate that even if respondents be treated as *bona fide* owners of the coal-bearing land,[13] they would not be producers of coal merely because they owned the property and received the coal for consumption after it was mined.

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[13] See note 21, p. 43, *infra*.

Respondents attack our reliance on the statutory definition of producer as a person "engaged in the business of mining coal" on the ground that the use of the word "includes" shows that the definition was not intended to be exclusive. The statute declares (Sec. 17 (e)):

> The term "producer" includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.

But at most only the list of "individuals, firms, associations, corporations, trustees, and receivers" is subject to supplementation, not the phrase "engaged in the business of mining coal." This is made clear, if it be otherwise doubtful, by Section 9 of the Act, which deals with labor practices of "producers," and by Section 10 (a), which requires "producers" to maintain "a uniform system of accounting of costs, wages, operations," etc. These provisions are, of course, applicable only to those actually engaged in mining coal; persons in the position of respondents have no control whatever over labor practices and have no power to maintain a uniform system of accounts for the mining operations. Indeed, it is difficult to imagine why, in the light of the purposes of the Act (see pp. 34–37, *infra*), Congress would have intended the term "producer" to cover persons not engaged in the coal mining business.

2. *The effect of the decision below upon the operation of the Act.* The construction of the statute

which the Director adopted is essential if the evils at which the Act is directed are to be remedied. "It was the judgment of Congress that price-fixing and the elimination of unfair competitive practices were appropriate methods for prevention of the financial ruin, low wages, poor working conditions, strikes, and disruption of the channels of trade which followed in the wake of the demoralized price structures in this industry." *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 395. The "demoralized price structures" resulted from an excess of capacity and a consequent struggle among producers to dispose of their coal, even at prices far below cost of production.[14] The result of this situation was a "buyers' market"—a condition allowing powerful consumers of bituminous coal progressively to depress prices by taking advantage of the acute competition among producers. As this Court noted in *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 363–364.

> * * * The District Court found that organized buying agencies, and large consumers purchasing substantial tonnages, "constitute unfavorable forces." "The highly organized and concentrated buying power which they control and the great abundance of coal available have contributed to make the market for coal a buyers' market for many years past."

[14] The "chaotic conditions" in the coal industry preceding the passage of this legislation are described in the documents cited in this Court's opinion in *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 395.

The underlying purpose of Congress in passing the Bituminous Coal Act was to counterbalance this power of consumers and to remedy the abuses of cut-throat competition through the establishment of minimum prices. *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 396. Yet the device here involved, if sanctioned, would permit consumer pressure and producer competition to continue unabated. Only the use of a different form of contract would be necessary. Consumers, instead of shopping around for coal at ruinous prices, would acquire leases and then bargain with producers for their services as independent contractors. And producers, instead of competing for the sale of coal at ruinous prices, would have to compete for the sale of their skill and organizations at prices still depressed by the oversupply of the market. Hence, consumers could again acquire coal at dictated prices, free from the restrictions of the statute, and producers would be obliged to continue their cut-throat competition, "price" competition simply being supplanted by competition for "compensation under contract." Here as in *United States* v. *San Francisco*, 310 U. S. 16, 26, "to limit the prohibitions of * * * the Act narrowly to sales * * * without more would permit evasion and frustration of the purpose of the lawmakers."

Indeed, if it be held that the Act may be circumvented by so simple a device, the resulting situation in the bituminous coal industry might

well become worse than it was under open competition. The producers who resist the lure of these arrangements and operate under the statute will be subjected to a new and unfair form of pressure from persons who have managed to escape from the restrictions of price regulation. This pressure will grow as the demand for coal on the open market declines in proportion to the increase in the amount obtained from the "independent contractor" producer. Producers capitulating to the pressure to become "independent contractors" will be tied indefinitely to powerful consumers. Their independence and mobility, and their ability to search for industrial consumers willing to pay a fair price for their coal, will be substantially impaired.

That otherwise independent producers could thus be converted into independent "contractors" for the purpose of evading minimum prices is vividly illustrated by the present case. The record shows that the independent contractors here are coal producers in their own right, operating other mines commercially (R. 27, 96, 129); that one of the contractors (Pritchard) had an interest in the company which previously operated the William-Ann mine under lease (R. 69) and that he himself has a lease on the mine which runs from the termination of respondents' lease (R. 133–141, 383–426); and that the same contractor is himself president and, with his wife, is in control of the producing company which assigned the lease of the Chilton Block mine to respondents (R. 126).

The record also shows, as the Director found, that the contracts were entered into in order to obtain prices lower than those established under the N. R. A. coal code and that they were extended from time to time with an eye to subsequent price-fixing legislation (R. 59, 202, 291).

It is fundamental that statutes are to be construed in the light of the purposes sought to be achieved and of the evils sought to be remedied. *United States* v. *San Francisco, supra; Helvering* v. *Hammel,* No. 49, present Term; *United States* v. *American Trucking Associations,* 310 U. S. 534, 543, and cases cited; *Rhodes* v. *Iowa,* 170 U. S. 412, 422; *Federal Trade Commission* v. *Western Meat Company,* 272 U. S. 554, 559. This Court has held that it will give to the Coal Act a construction "which will preserve the vitality of the Act" and not one under which "its effectiveness would be seriously impaired." *Sunshine Anthracite Coal Co.* v. *Adkins,* 310 U. S. 381, 392. Since the Act is a remedial one, its exemptions are to be strictly construed so as to harmonize and not conflict with its basic objectives. *McDonald* v. *Thompson,* 305 U. S. 263, 266; *Piedmont & Northern Ry. Co.* v. *Interstate Commerce Commission,* 286 U. S. 299, 311. Even if Section 4 II (l) were ambiguous, these principles would require that it be interpreted as inapplicable to the situation presented in the case at bar.

3. *The relationship between respondents and the contractors is not that of principal and agent.*—

Respondents have taken the position that they are the producers of the coal mined by the independent contractors because the latter are their agents. Neither respondents nor the court below denied that the producers in this case are independent contractors; but the court below, obscuring the point in a "veil of Latinity" (*Tiffany on Agency*, 2d ed., 1924, p. 8), assumed (R. 579) that the maxim *qui facit per alium facit per se* disposed of the case. This maxim is, of course, only a learned method of describing the agency relationship.[15]

Agent and agency are words of many meanings.[16] It is unecessary for purposes of this case, however, to delve into the "technicalities of the law of agency." *Milk Wagon Drivers' Union* v. *Meadowmoor Dairies*, No. 1, present Term, decided February 10, 1941. The question here is to be decided in the light of the language and purposes of the Act and not by the mechanical application of com-

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[15] In *Standard Oil Co.* v. *Anderson*, 212 U. S. 215, 220, this Court recognized that: "* * * The reason for the rule is not clarified much by the Latin phrases in which it is sometimes clothed. They are rather restatements than explanations of the rule."

[16] See *Restatement of the Law of Agency*, Secs. 1, 2, pp. 7–13; Mechem, *Agency* (2d ed., 1914), Secs. 1–8, 25, 26, 36–40; Tiffany, *Agency* (2d. ed., 1924), Sec. 1; Hufcutt, *Agency* (2d ed., 1901), Secs. 1–8; Douglas, *Vicarious Liability and Administration of Risk*, 38 Yale L. J. 584; Steffen, *Independent Contractor and the Good Life*, 2 Univ. of Chicago L. Rev. 501; Leidy, *Salesmen as Independent Contractors*, 28 Mich. L. Rev. 365; 2 C. J. S., pp. 1023–1029; Note, 19 A. L. R. 226, 256 *et seq.*

mon law theories of agency, devised and developed in connection with questions of tort and contract liability.[17] The remoteness of such theories from the sense and context of the Bituminous Coal Act is patent; and the magic of a Latin phrase does not bridge the gap. Congress certainly did not intend the exemption in Section 4 II (l) to apply when consumers and producers are entirely separate business enterprises, as they are here, irrespective of the common law definition of an agency relationship. Nor did Congress intend that, through the application of so-called common law principles, Section 4 II (l) should become an instrument for destroying the remainder of the Act. See *United States* v. *San Francisco, supra.*[18]

But even if common law principles of agency are to be applied, the contractors are not the agents of respondents under any of the accepted tests. An agent is "a person authorized by another to act on his account and under his control." "An agent * * * holds a power to alter the legal

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[17] Even statutes containing such terms as "employee" or "agent" are to "be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them." L. Hand, J., in *Lehigh Valley Coal Co.* v. *Yensavage*, 218 Fed. 547, 553 (C. C. A. 2d), certiorari denied, 235 U. S. 705. See also *Restatement of the Law of Agency*, Sec. 220, comment d, p. 486.

[18] Cf. *United States* v. *Rock Royal Co-op., Inc.*, 307 U. S. 533, 579–580; *United States* v. *Corinth Creamery*, 21 F. Supp. 265 (D. Vt.), in which the courts nullified attempts to use the agency device to escape from the price provisions of the Agricultural Adjustment Act.

relations between the principal and third persons." *Restatement of the Law of Agency*, Secs. 1, 12, pp. 10, 43. An agent is "a fiduciary" (*id.*, Sec. 13, p. 45). "Among the agent's fiduciary duties to the principal is the duty to account for profits arising out of the employment * * *" (*ibid.*).

The contractors in the present case present none of these characteristics. They operate on their own account and for their own benefit, and are in no respect subject to respondents' control in the conduct of the mining business. They are not empowered or authorized to bind respondents in contractual dealings with third persons. They buy materials, rent equipment, and engage labor in their own name as principals. They alone are liable for all the incidents of the mining operation. Respondents cannot and do not direct the contractors, even in the most general way, as to how the mining operations shall be conducted. They have merely the power to inspect and reject the coal after it is mined, a privilege normally reserved by commercial consumers. The price paid by respondents, as in the case of many other commercial contracts, is, in effect, on a cost-plus basis, but respondents have no control over the cost. They can merely terminate the contract and buy their coal elsewhere if they think that the costs of operation are too high. In short, the contractors are engaged in an independent calling and are responsible only for the end to

be achieved and not for the means by which it is to be accomplished.

It is thus clear that, under the most orthodox tests, the contractors here are not respondents' agents. Mechem, *Agency*, Secs 26, 40; *United States* v. *Driscoll*, 96 U. S. 421.[19] In some situations independent contractors may act as agents for those with whom they contract, but, as we have shown, that is not this case. See *Restatement of the Law of Agency*, pp. 12–13, where the following illustration is given:

> While an agent who contracts to act and who is not a servant is therefore an independent contractor, not all independent contractors are agents. Thus, one who contracts for a stipulated price to build a house for another who reserves no direction over the conduct of the work is an independent contractor; but he is not an agent since he is not a fiduciary, has no power to make the one employing him a party to a transaction, and is subject to no control as to his conduct.

The contracts by their terms seek to avoid any liability on the part of respondents for the acts of the contractors and thus to insulate respondents against any of the consequences of a genuine agency relationship. In other words, respondents do not

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[19] See also *Chicago, Rock Island & Pacific Railway Co.* v. *Bond*, 240 U. S. 449, 455–456; *Casement* v. *Brown*, 148 U. S. 615, 622; *Metcalf & Eddy* v. *Mitchell*, 269 U. S. 514, 520–521; *Pampanga Sugar Mills* v. *Trinidad*, 279 U. S. 211, 216. And see note 16, p. 38, *supra*.

desire to have the contractors deemed their agents where recognition of an agency relationship might, as it normally would, subject them to additional liabilities, but only where, as under the Coal Act, it might enable them to escape from a burden or obligation. The absence of any real incidents of agency is a significant indication of the true status of the parties.

The authorities relied upon by respondents are not opposed to our position. In *Consolidated Indiana Coal Co.* v. *National Bituminous Coal Commission*, 103 F. (2d) 124 (C. C. A. 7th), the holding was that coal produced by a wholly-owned and controlled subsidiary was produced by the parent railroad company which consumed it because the subsidiary was under the "complete control, supervision and dominion" (p. 128) of the railroad, and was "a mere shell with no authority on its own account to act or perform" (p. 129). Since the Director's decision in the present case is based on the absence here of the very factors found determinative in the *Consolidated Indiana* case, that decision can scarcely be regarded as a precedent supporting the respondents.[20]

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[20] Although the *Consolidated Indiana* case does not conflict with, and indeed supports, the Government's position here, we believe that the decision in other respects is inconsistent both with the legislative history of the Act (set forth, *infra*, p. 47) and with subsequent decisions of this Court. Cf. *Higgins* v. *Smith*, 308 U. S. 473; *Taylor* v. *Standard Gas Co.*, 306 U. S. 307.

In *Oliver Iron Mining Co.* v. *Lord*, 262 U. S. 172, a state tax on persons engaged in the business of mining or producing iron ore, but excluding contractors who performed portions of the mining operation, was upheld against attack under the equal protection clause on the ground that the contractors were not engaged in mining on their own account, and were thus employees, not principals, in the business (p. 180). Since the parties to that case apparently agreed that the plaintiff mining companies and not the contractors were engaged in the business of mining within the meaning of the Minnesota statute involved, this Court did not pass on the question whether the contractors were subject to the tax. Determination of the issue of equal protection was not, of course, dependent upon whether the contractors were employees in a technical sense, but upon whether they could reasonably be differentiated from the principal mining companies. Moreover, in that case the plaintiff companies were unquestionably themselves engaged in the business of mining; the contractors were employed by them to perform particular parts of the mining operation, such as stripping off the over-burden or loading the ore into cars, rather than to take over and operate the entire mine free from supervision and control, as is the case here.

4. *The absence of a formal sale or transfer of title is immaterial.*— Respondents contend that because the transactions between them and the con-

tractors are not called sales (title technically being transferred to them by the lessors rather than by the contractors)[21] and because the consideration paid may not be called a "price," the Act was not intended to apply. The contention does not advance their position, for even had Congress intended the Act to apply only to sales, that fact alone would scarcely make respondents the producer of the coal which they consume and consequently would not bring them within the exemption contained in Section 4 II (l).

In any event, the Act contains numerous proofs that it was not designed to be emasculated by the "witty diversities of the law of sales." Cf. *Rearick* v. *Pennsylvania*, 203 U. S. 507, 512; *United States* v. *San Francisco*, 310 U. S. 16. Its price provisions are expressly made applicable to coal "sold *or delivered*" (Section 4 II (e)). Many provisions, including the penalty clauses (Section 5 (b)), apply to coal "sold *or otherwise disposed of.*" Similar expressions showing that the Act is not restricted in its scope to technical sales are found

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[21] Respondents' leases did not give them title to the coal in place. *Von Baumbach* v. *Sargent Land Co.*, 242 U. S. 503, 517–518; *Browning* v. *Boswell*, 215 Fed. 826, 834 (C. C. A. 4th); *Minor* v. *Pursglove Coal Mining Co.*, 111 W. Va. 28; *Graham* v. *Smith*, 170 Va. 246, 255. They obtain title only by the act of the independent contractor in severing the coal from the realty (*ibid.*). Thus, although title did not pass through the independent contractor, it rested in respondents only by reason of the act of the independent contractor.

throughout the statute.[22] And in *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 393, this Court noted that the regulatory provisions of the Act are applicable to "sales or *transactions*" in or affecting interstate commerce. Presumably the word "sale" was supplemented by more general language in order to prevent evasion of the Act by just such a device as the present record discloses. Here there was clearly a transaction, a delivery,[23] a disposal.[24]

The court below assumed that there could be no price upon which the Act could operate if there were no sale. But the use of such terms as "other-

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[22] Section 1 ("regulation of the sale and distribution"); Section 3 (a) ("sale or other disposal"); Section 3 (b) ("sale or other disposal," "disposed of by sale," "disposed of otherwise than by sale," "sale or disposal"); Section 3 (d) ("disposed of otherwise than by sale"); Section 4 ("the code * * * shall be applicable only to matters and transactions in or directly affecting interstate commerce"); Section 4 II (e) ("sold or delivered or offered for sale"); Section 4-A ("transaction in coal," "sold, delivered or offered for sale"); Section 5 (b) ("sold or otherwise disposed of", "if disposed of otherwise than by sale", "sale or other disposal"); Section 5 (c) ("if disposed of otherwise than by sale", "sold or disposed of").

[23] The word "delivery" has been held not to be limited to situations where title has passed. *Poor* v. *American Locomotive Co.*, 67 F. (2d) 626, 630 (C. C. A. 7th).

[24] This Court has on several occasions stated that, "The expression 'to dispose of' is very broad and signifies more than 'to sell'." *Hill* v. *Sumner*, 132 U. S. 118, 123-124; *Phelps* v. *Harris*, 101 U. S. 370, 380; *Platt* v. *Union Pacific R. R. Co.*, 99 U. S. 48, 59; *Dayton Brass Castings Co.* v. *Gilligan*, 267 Fed. 872, 877-878 (S. D. Ohio), affirmed, 277 Fed. 227 (C. C. A. 6th), certiorari denied, 258 U. S. 619.

wise disposed of," as well as the basic objectives of the Act (see pp. 33–37, *supra*), shows that the word "price" is not to be construed in a narrow technical sense, but rather applies to the consideration paid for coal regardless of the form of the transaction. Despite the doubts of the court below, price regulation *can* operate upon the amounts paid by respondents to the contractors and lessors, which together are the economic counterpart of the price paid in an ordinary sale.[25]

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[25] Respondent's brief in opposition to the petition for certiorari expresses a fear that application of the minimum prices to coal obtained from the contractors would require respondents to pay the amount of royalty twice, both to the landowner or lessor and again as part of the compensation to the contractor. But in the Government's brief below it was expressly stated that, "When minimum prices are established, petitioners may, as to coal received from the contractors, and without any further order by the Division, deduct from the minimum prices the amount of any royalty paid to the lessors." Royalty payments are obviously a part of the price paid for the coal within the meaning of the Act, and the Government has no interest in the manner in which the price is divided by the lessor and the producing contractor. Moreover, appropriate administrative and judicial remedies are available under the Act for persons who believe that prices are improperly fixed. See Sections 4 II (d), 6 (b). Respondents are not in a position to complain about the erroneous inclusion of items in the price to be paid before it has occurred and before such remedies are exhausted. In view of the position taken by the Director, it is obvious that the fears expressed by respondents as to the necessity of paying double royalties are wholly chimerical.

5. *Legislative intention as to "captive" coal.*— The court below based its ruling in part upon the assumption that Section 4 II (l) was intended to exclude all "captive" coal mines from the operation of the Act and that the mines in question are captive mines (R. 576).

The expression "captive coal," though often heard in the coal industry, is found nowhere in the present Act. The term is a loose one—a colloquialism in the industry, with no dictionary or legal meaning—used to describe numerous and widely varied situations. When Congress used the word "captive" in the 1935 Coal Act (not for purposes of exemption but in order to provide a basis for computing the amount of tax payable where there was no arms-length transaction), it also incorporated in the Act a definition of the term which included coal produced by a "subsidiary or affiliate" (49 Stat. 1008).

Section 4 II (l) does not contain the phrase "captive coal." The Senate passed an amendment to Section 4 II (l) (81 Cong. Rec. 3136) which provided for the exemption of coal produced by a subsidiary or affiliated company, thereby conforming Section 4 II (l) to the definition of captive coal contained in the 1935 Act, but the amendment was eliminated by the conference committee (H. Rep. 578, 75th Cong., 1st Sess., pp. 1, 8). It is thus clear that Section 4 II (l) was not intended to exempt even coal produced by corporations affil-

iated with the consuming company, although Congress had previously defined this to be captive coal.

Indeed, the carefully chosen language of the section is inconsistent with a contrary interpretation. It applies only to "coal consumed by the producer"; where the same person is both producer and consumer, there are no transactions between "them" which may be the subject of regulation. Section 4 II (1), in terms, covers only that type of situation, and there is no indication in its legislative history that it had any broader purpose.

The court below relied upon testimony given by Charles F. Hosford, Chairman of the former Coal Commission, before a Senate Committee, which it construed as expressing an opinion that the bill under consideration did not apply to captive coal. Hearings before the Senate Committee on Interstate Commerce on S. 4668, 74th Cong., 2d Sess., pp. 32–33. An examination of the testimony quoted (R. 578–579) will show that it throws no light upon the Congressional intention with respect to the present problem.[26] The testimony was given during a hearing on an earlier draft of the

[26] Since the bill then before Congress did not exempt captive coal, the statement of Mr. Hosford that the price provisions would not apply to such coal (R. 579) must be construed as meaning that the price provisions would be incapable of being applied to such coal. Since the only type of "captive" coal to which the price provisions could not be applied is coal produced and consumed by the same person, it is apparent that Hosford's statement as to the non-inclusion of "captive" coal expresses no different view of the scope of the Act than we attribute to it.

bill (S. 4668, 74th Cong., 2d Sess.)[27] which contained neither Section 4 II (1) nor any similar provision, and the testimony then given obviously did not relate to any such provision.

III

APPLICATION OF THE BITUMINOUS COAL ACT TO RESPONDENTS IS CONSTITUTIONAL

Before the Director and in the court below respondents argued that to apply the Coal Act to the transactions in question would be unconstitutional. They may renew that argument here.

Respondents do not deny that the coal they receive is shipped to them across state lines, nor that Congress has the power to fix the price of coal sold f. o. b. mine for interstate transportation. Cf. *Flanagan* v. *Federal Coal Co.*, 267 U. S. 222; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381. They rest their argument on the ground that application of the Act in the present circumstances would be to regulate the royalty paid for the right to extract coal and the amount paid for the service of mining coal, and that such payments relate to the production of coal and are wholly intrastate in nature.

It is clear from the foregoing discussion, however, that the Director is not regulating the amount

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[27] This bill failed of passage in the 74th Congress. Bills on the same subject, though slightly changed, were introduced in the 75th Congress (S. 1, H. R. 4985). Section 4 II (1) first appeared in H. R. 4985, 75th Cong., 1st Sess. See H. Rep. 294, 75th Cong., 1st Sess., p. 6.

of the royalty or of the compensation for services but only the total amount to be paid for the coal. He does not claim the right to determine the manner in which the consideration paid for coal should be apportioned among its various cost components, so long as the apportionment is in good faith and not an effort to evade the statute. Any effect the regulation under the Act may have upon royalties and other compensation will result because they are an intrinsic part of the price paid for the coal.

Moreover, in view of the decision in *United States* v. *Darby Lumber Co.*, No. 82, present Term, it is clear that the Coal Act would be valid even if it were applicable to the intrastate ingredients of the consideration paid for coal shipped interstate. The coal here involved moves in interstate commerce, and regulation of the payment for services or royalties would bear as close a relation to the fixing of interstate prices as the regulation of wages bore to the prohibition of interstate shipments in the *Darby* case. Furthermore, if producers can dispose of their coal through the contractual arrangements adopted in this case, they will obtain an advantage over their competitors who comply with the prices established under the Act. Congress clearly has the power to protect interstate commerce against injury from such competition, even when it results from purely intra-

state transactions. *Houston & Texas Ry.* v. *United States*, 234 U. S. 342; *Wisconsin Railroad Comm.* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563; *Sunshine Anthracite Coal Co.* v. *Adkins, supra; United States* v. *Rock Royal Co-op, Inc.*, 307 U. S. 533; *United States* v. *Darby Lumber Co., supra.*

The essence of respondents' argument is that, although Congress may regulate the price paid for coal shipped in interstate commerce, it cannot regulate the consideration paid for such coal if, in view of the absence of any passage of title, that consideration is not a "price" within the purview of the law of sales. But the power of Congress to regulate interstate commerce is not subject to any such refined restrictions. This Court has repeatedly proclaimed that technical considerations relating to the passage of title do not determine what constitutes interstate commerce under the Constitution. *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453, 463; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 605; *Rearick* v. *Pennsylvania*, 203 U. S. 507, 512; *Pennsylvania R. R. Co.* v. *Clark Coal Mining Co.*, 238 U. S. 456, 465–468. Thus, it is plainly immaterial whether the compensation paid for coal shipped in interstate commerce is or is not a "price" within the meaning of the law of sales. Regulation of the consideration paid

for goods so shipped is a regulation of interstate commerce regardless of how the compensation is characterized.

Respondents also contend that the Fifth Amendment forbids regulation of the royalties to the lessor and the compensation paid for the services of the independent contractor. We have already stated that these are not regulated, and that only the total amount to be paid for the coal is fixed (see p. 49, *supra*). In any event, application of the Act to the contracts in question is necessary to effect its legitimate purpose as described by this Court in the *Sunshine Anthracite* case (310 U. S. at 394, 396). The "abuses of cut-throat competition" in the industry (*ibid.*) might readily be recreated if such devices as the one here employed were permitted to go unregulated. The due process clause does not impose destructive limitations upon the powers of Congress to carry out its legitimate policies. *Purity Extract and Tonic Company* v. *Lynch*, 226 U. S. 192, 201–202; *Ruppert* v. *Caffey*, 251 U. S. 264; *Everard's Breweries* v. *Day*, 265 U. S. 545, 560; *Otis* v. *Parker*, 187 U. S. 606, 609; *Westfall* v. *United States*, 274 U. S. 256, 259; *St. John* v. *New York*, 201 U. S. 633.

CONCLUSION

For the above reasons it is respectfully submitted that the judgment of the court below should be reversed.

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